

ASSEMBLY BILL

No. 947

**Introduced by Assembly Member Chávez
(Coauthor: Assembly Member Jones)**

February 26, 2015

An act to amend Section 11370.1 of the Health and Safety Code, and to amend Section 12022 of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 947, as introduced, Chávez. Controlled substances: firearms.

(1) Existing law makes it a felony, punishable by imprisonment in the state prison for 2, 3, or 4 years to unlawfully possess any amount of a substance containing cocaine base, cocaine, heroin, methamphetamine, or phencyclidine while armed with a loaded, operable firearm.

This bill would instead make that felony punishable in a county jail. By requiring the felony to be served in county jail, this bill would impose a state-mandated local program.

(2) Existing law imposes an enhancement of 3, 4, or 5 years on the sentence of a person who is personally armed with a firearm in the commission of a violation of specified controlled substance offenses.

This bill would require the enhancement to be served in state prison.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11370.1 of the Health and Safety Code
2 is amended to read:
3 11370.1. (a) Notwithstanding Section 11350 or 11377 or any
4 ~~other provision of law, every~~ a person who unlawfully possesses
5 any amount of a substance containing cocaine base, a substance
6 containing cocaine, a substance containing heroin, a substance
7 containing methamphetamine, a crystalline substance containing
8 phencyclidine, a liquid substance containing phencyclidine, plant
9 material containing phencyclidine, or a hand-rolled cigarette treated
10 with phencyclidine while armed with a loaded, operable firearm
11 is guilty of a felony punishable by imprisonment ~~in the state prison~~
12 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
13 two, three, or four years.
14 As used in this subdivision, “armed with” means having available
15 for immediate offensive or defensive use.
16 (b) ~~Any~~ A person who is convicted under this section shall be
17 ineligible for diversion or deferred entry of judgment under Chapter
18 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the
19 Penal Code.
20 SEC. 2. Section 12022 of the Penal Code is amended to read:
21 12022. (a) (1) Except as provided in subdivisions (c) and (d),
22 a person who is armed with a firearm in the commission of a felony
23 or attempted felony shall be punished by an additional and
24 consecutive term of imprisonment pursuant to subdivision (h) of
25 Section 1170 for one year, unless the arming is an element of that
26 offense. This additional term shall apply to a person who is a
27 principal in the commission of a felony or attempted felony if one
28 or more of the principals is armed with a firearm, whether or not
29 the person is personally armed with a firearm.
30 (2) Except as provided in subdivision (c), and notwithstanding
31 subdivision (d), if the firearm is an assault weapon, as defined in
32 Section 30510 or 30515, or a machinegun, as defined in Section
33 16880, or a .50 BMG rifle, as defined in Section 30530, the
34 additional and consecutive term described in this subdivision shall
35 be three years imprisonment pursuant to subdivision (h) of Section

1 1170 whether or not the arming is an element of the offense of
2 which the person was convicted. The additional term provided in
3 this paragraph shall apply to any person who is a principal in the
4 commission of a felony or attempted felony if one or more of the
5 principals is armed with an assault weapon, machinegun, or a .50
6 BMG rifle, whether or not the person is personally armed with an
7 assault weapon, machinegun, or a .50 BMG rifle.

8 (b) (1) A person who personally uses a deadly or dangerous
9 weapon in the commission of a felony or attempted felony shall
10 be punished by an additional and consecutive term of imprisonment
11 in the state prison for one year, unless use of a deadly or dangerous
12 weapon is an element of that offense.

13 (2) If the person described in paragraph (1) has been convicted
14 of carjacking or attempted carjacking, the additional term shall be
15 in the state prison for one, two, or three years.

16 (3) When a person is found to have personally used a deadly or
17 dangerous weapon in the commission of a felony or attempted
18 felony as provided in this subdivision and the weapon is owned
19 by that person, the court shall order that the weapon be deemed a
20 nuisance and disposed of in the manner provided in Sections 18000
21 and 18005.

22 (c) Notwithstanding the enhancement set forth in subdivision
23 (a), a person who is personally armed with a firearm in the
24 commission of a violation or attempted violation of Section 11351,
25 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,
26 11379.5, or 11379.6 of the Health and Safety Code shall be
27 punished by an additional and consecutive term of imprisonment
28 ~~pursuant to subdivision (h) of Section 1170~~ *in the state prison* for
29 three, four, or five years.

30 (d) Notwithstanding the enhancement set forth in subdivision
31 (a), a person who is not personally armed with a firearm who,
32 knowing that another principal is personally armed with a firearm,
33 is a principal in the commission of an offense or attempted offense
34 specified in subdivision (c), shall be punished by an additional and
35 consecutive term of imprisonment pursuant to subdivision (h) of
36 Section 1170 for one, two, or three years.

37 (e) For purposes of imposing an enhancement under Section
38 1170.1, the enhancements under this section shall count as a single
39 enhancement.

1 (f) Notwithstanding any other ~~provision of~~ law, the court may
2 strike the additional punishment for the enhancements provided
3 in subdivision (c) or (d) in an unusual case where the interests of
4 justice would best be served, if the court specifies on the record
5 and enters into the minutes the circumstances indicating that the
6 interests of justice would best be served by that disposition.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.